
OLR Bill Analysis

sSB 1028

AN ACT CONCERNING INSURANCE DEPARTMENT EXAMINATIONS OF MARKET CONDUCT ACTIVITY.

SUMMARY:

The law authorizes the insurance commissioner to perform market conduct examinations of regulated entities (i.e., insurers, HMOs, third-party administrators, and fraternal benefit societies doing business in Connecticut). A market conduct examination is an audit to determine compliance with applicable state laws and regulations.

This bill authorizes the commissioner to hire outside consultants (e.g., attorneys, actuaries, accountants, and other experts not on the commissioner's staff) to assist with the examinations. The examined entity must pay the cost of these consultants.

Under current law, non-domestic entities being examined must pay all examination costs. The bill removes this provision, leaving it unclear whether non-domestic entities must pay examination costs other than the costs of hired consultants.

The bill exempts a domestic entity from paying the salaries, fringe benefits, travel, and maintenance expenses of the department's examiners if the entity is assessed under law to pay the Insurance Department's operating expenses. By law, unchanged by the bill, domestic entities under examination must pay the examiner's travel and maintenance expenses when the department examines the entity outside of Connecticut.

The bill specifies that no cause of action or liability accrues against certain activities of specified people for activities related to market conduct examinations performed in good faith.

Additionally, the bill makes certain examination documents

confidential and not subject to subpoena. It allows the commissioner to share examination reports, preliminary reports or results, or any related matter with state, federal, and international regulatory agencies and states' law enforcement authorities if the recipient agrees in writing to keep the information confidential.

Lastly, the bill makes technical and conforming changes relating to examinations of third-party administrators. PA 11-58 added third-party administrators to the list of entities that the commissioner may examine. The bill adds references to third-party administrators throughout the market conduct examination statute.

EFFECTIVE DATE: October 1, 2013

IMMUNITY

The bill specifies that no cause of action or liability accrues against the commissioner, his authorized representatives, or appointed examiners for statements made or conduct performed in good faith while carrying out market conduct examinations. And no cause of action or liability accrues against anyone communicating or delivering information to the commissioner, his representatives, or examiners during an examination if the communication or delivery is performed in good faith and without the intent to defraud or deceive.

If someone files a civil action for libel, slander, or other relevant tort arising out of examination activities against the commissioner, his authorized representative, or an appointed examiner, the bill entitles the commissioner or other person to an award of attorney's fees and costs if (1) he or she prevails and (2) the party bringing the action was not substantially justified in doing so. The bill defines a proceeding as "substantially justified" if it had a reasonable basis in law or fact when it was initiated.

The bill states that it does not abrogate or modify any common law or statutory privilege or immunity the commissioner, his representatives, or examiners currently enjoy.

CONFIDENTIALITY

The bill makes working papers, recorded information, documents, and copies of these, produced or obtained by, or disclosed to, the commissioner or anyone during a market conduct examination confidential and not subject to subpoena. The bill generally prohibits the commissioner or anyone else from making them public. The bill allows the commissioner to grant the National Association of Insurance Commissioners access, if it agrees in writing to keep them confidential.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 12 Nay 6 (03/14/2013)